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HUMAN RIGHTS COMMITTEE
Seventy-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations by the Human Rights Committee

Venezuela

1. The Committee considered the third periodic report of Venezuela (CCPR/C/VEN/98/3 and addendum) at its 1899th and 1900th meetings, held on 19 and 20 March 2001 and adopted the following concluding comments at its 1918th meeting, held on 2 April 2001.

A. Introduction

2. The Committee welcomes the State party's third periodic report and the opportunity to be able to continue its review of the human rights situation in Venezuela with a delegation that included officials from various Government bodies. However, it regrets the delay in submission of the report and the lack of information on the de facto human rights situation in both the report and the addendum, which greatly hindered it in determining whether human rights are fully and effectively exercised and enjoyed in Venezuela.

B. Positive aspects

3. The Committee expresses its satisfaction at the fact that the Constitution gives international human rights instruments a status equal to that of the Constitution itself.

4. The Committee also notes with satisfaction the numerous provisions of the Constitution which are designed to recognize and guarantee various human rights, including the establishment of an Office of the Ombudsman.

C. Subjects of concern and recommendations

5. The Committee is concerned to discover that article 19 of the Constitution guarantees citizens their rights "in accordance with the principle of progressiveness", a principle that has not been satisfactorily explained.

6. The Committee is gravely concerned at the reports of disappearances, despite the fact that such acts have been defined as crimes under the new legislation. It is also concerned at the lack of action by the State to deal with disappearances that occurred in 1989. The delegation's statement that investigations of the disappearances are being pursued is unsatisfactory.

Taking into account the provisions of articles 6, 7 and 9 of the Covenant, the State party should give special priority to rapid and effective investigations designed to determine the whereabouts of the disappeared persons and those responsible for disappearances. The State party should also take all necessary measures to prevent disappearances, including adoption of the legislation described in article 45 of the Constitution.

7. The Committee is also gravely concerned at the many reports of extrajudicial executions and the failure of the State party to react to them.

The State party should conduct investigations to identify those responsible for extrajudicial executions and bring them to justice. It should also take the necessary measures to prevent the occurrence of such violations of article 6 of the Covenant.

8. The Committee is deeply concerned at the reports of torture and excessive use of force by the police and other security forces in breach of article 7 of the Covenant; the State party's apparent delay in responding to such occurrences; and the absence of independent mechanisms to investigate the reports in question. The right of recourse to the courts is not a substitute for such mechanisms.

The State party should establish an independent body empowered to receive and investigate all reports of excessive use of force and other abuses of authority by the police and other security forces, to be followed, where appropriate, by prosecution of those who appear to be responsible for them. The Committee also urges the State party to pass laws giving effect to the prohibition of torture and cruel, inhuman and degrading treatment laid down in article 7 of the Covenant and article 46 of the Constitution, and strengthen the human rights education programmes for all State officials whose functions are related to the treatment of detainees.

9. The Committee regrets the lack of detailed information on detention by the police. It is also concerned at the lack of clarity on the status and powers of the Sectoral Department of Intelligence and Presentation Services (DISIP), especially given the large number of complaints about the treatment of detainees.

To enable the Committee to evaluate its compliance with articles 9, 10 and 14 of the Covenant, the State party needs to tell it whether detained persons are brought before a judge or an official with judicial authority without delay; whether a lawyer may be present during their interrogation by the police; whether they are automatically given medical check-ups on entering

and after being released from police custody; what regulations govern the holding of detained persons incommunicado; whether appropriate legislation has been enacted to implement all the provisions of the Constitution with respect to detention; and the status and powers of DISIP.

10. The Committee regrets the lack of information on the average time spent in detention awaiting judgement. The length of such detention may raise issues of compatibility with article 9, paragraph 3, and article 14 of the Covenant.

The State party should speed up trials and abide strictly by article 9, paragraph 3, of the Covenant in order to bring the situation into line with the requirements of the Covenant.

11. The Committee is concerned at conditions in Venezuelan prisons and places of detention, since the delegation itself acknowledged that most human rights violations in Venezuela occur in such places. The overcrowding and failure to segregate detainees awaiting judgement from convicts are incompatible with the Covenant.

The recently established institutional mechanisms (supervising prosecutors and prison-supervising judges) for supervising conditions in prisons and investigating the complaints of prisoners should be strengthened with a view to the implementation of articles 7 and 10 of the Covenant.

12. While the Committee in principle welcomes the reform of the Code of Criminal Procedure, it is concerned at the lack of information on the provisions of the Code offering guarantees of a fair trial as called for by article 14 of the Covenant.

The State party should provide such information as soon as possible.

13. The Committee is particularly concerned at the situation of the judiciary in Venezuela, which is still undergoing reform. An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, thus infringing article 2, paragraph 3, and article 14 of the Covenant. Another cause for concern is the lack of information on the effects of the reform process to date and the absence of a date for that process to come to an end.

The reform of the judiciary must not continue. The State party should furnish information on the number of judges removed during the process, the reasons for their removal, and the procedure followed.

14. The Committee's concern about the independence of the judiciary extends to the information, delivered by the delegation, that article 275 of the Constitution empowers the National Ethics Council (Consejo Moral Republicano) comprising the Ombudsman, the Attorney-General and the Comptroller-General to issue warnings to judges, even those of the Supreme Court, and impose sanctions if those warnings are not heeded.

The State party should carry out a careful review of the enabling bill for article 275 of the Constitution in order to safeguard the independence of the judiciary in accordance with article 2, paragraph 3, and article 14 of the Covenant.

15. The Committee is greatly concerned at the treatment of persons seeking asylum or refuge in Venezuela, especially those entering the country from Colombia, chiefly because of the lack of national legislation establishing selection criteria for asylum seekers even though there are bilateral arrangements between Colombia and Venezuela on such matters. The Committee is also concerned about the possible breach of the principle of non-refoulement.

The State party should ensure compliance with articles 7 and 13 of the Covenant and with the norms of general international law, adhere to or implement the relevant international conventions, provide access to the relevant specialized agencies in the areas concerned, and seek the assistance, if necessary, of the international bodies dealing with the matter.

16. The Committee is deeply concerned by the information on trafficking in women to Venezuela, especially from neighbouring countries, and by the lack of information from the delegation on the extent of the problem and action to combat it.

Preventive measures should be taken to eliminate the trafficking in women in order to comply with the provisions of articles 7 and 8 of the Covenant and set up rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

17. The Committee is concerned about the level of violence against women, including the many reported cases of kidnapping and murder that have not resulted in arrests or prosecution of those responsible. It is also concerned at the many allegations of rape or torture of women in custody by members of the security forces, offences such women do not dare to report. All the foregoing gives rise to serious concerns in the light of articles 6 and 7 of the Covenant.

The State party should take effective measures to guarantee women's safety, ensure that no pressure is put on them to dissuade them from reporting such violations, that all allegations of abuses are investigated and that those committing such acts are brought to justice.

18. The minimum marriageable age, 14 for girls and 16 for boys, and the fact that such age may be lowered without any limits for girls in case of pregnancy or childbirth, raises problems with respect to the fulfilment by the State party of its obligation under article 24, paragraph 1, to protect minors. Marriage at such an early age does not appear to be compatible with article 23 of the Covenant, which requires the free and full consent of the intending spouses. The Committee is also concerned at the early age of sexual consent (12) for girls.

The State party should amend the relevant law to bring it into line with articles 23, 24 and 3 of the Covenant.

19. The criminalization of all non-therapeutic abortion poses serious problems, particularly in the light of unchallenged reports that many women are undergoing life-threatening illegal abortions. The legal duty imposed on health workers to report cases where women have undergone abortions may deter women from seeking medical treatment, thereby endangering their lives.

The State party must adopt the necessary measures to guarantee the right to life (article 6) for pregnant women who decide to terminate their pregnancies, including amending the law to create exceptions to the general prohibition of all non-therapeutic abortion. The State party should protect the confidential nature of medical information.

20. The Committee is concerned about the continued existence of a legal provision exempting a rapist from any penalty if he marries the victim.

The State party should immediately repeal this legislation, which is incompatible with articles 3, 7, 23, 26, 2 (3) and 24 of the Covenant, particularly taking into account the early age at which girls can enter into marriage.

21. The Committee is concerned about the insufficient participation of women in political life, the judiciary, and other sectors.

In order to comply with articles 3 and 25, the State party should take the appropriate measures to improve participation by women, through affirmative action programmes if necessary.

22. With a view to complying with its obligations arising from articles 2, 3 and 26 of the Covenant, the Committee urges the State party to amend all laws that still discriminate against women, including those relating to adultery and the ban on marriage for 10 months following the dissolution of a previous marriage.

23. The Committee is concerned at the lack of a wide-ranging law prohibiting discrimination in private-sector areas such as employment and housing. Pursuant to article 2, paragraph 3, and article 26 of the Covenant, the State party has a duty to protect persons against such discrimination.

The State party should promulgate a law prohibiting all discrimination and providing effective recourse for all persons against violations of their right to non-discrimination.

24. The Committee deplores the continually worsening situation of street children. Those children are at high risk of sexual violence and are vulnerable to sexual trafficking.

The State party should take effective measures for the protection and rehabilitation of street children, pursuant to article 24 of the Covenant, including measures to end sexual exploitation and child pornography.

25. The Committee notes the privileged status of the Roman Catholic Church and is concerned about the possible adverse effects of this on other religions.

The State party should guarantee that no religious community in Venezuela will suffer discrimination.

26. The Committee notes that there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.

The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.

27. The Committee is very concerned about interference by the authorities in trade-union activities including the free election of union leaders.

The State party should, pursuant to article 22 of the Covenant, guarantee that unions are free to conduct their business and choose their business without official interference.

28. The Committee commends the State party for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wished to exploit natural resources in areas they inhabited and enshrining the right of indigenous peoples to pursue and promote their own economic practices. It regrets, however, the lack of any information regarding the practical implementation of those constitutional provisions.

The State party should provide information to the Committee on the implementation of those constitutional provisions with a view to complying with article 27.

29. The State party should widely publicize the text of its third periodic report, the addendum and these concluding observations.

30. The State party should, pursuant to article 70, paragraph 5, of the Committee's rules of procedure, furnish within one year information on any action it takes in the light of the Committee's recommendations on enforced or involuntary disappearances (paras. 6 and 7 above), torture and the excessive use of force by the police and other security forces (para. 8), police detention and detention while awaiting judgement (paras. 9 and 10), prisons (para. 11) and the status of the judiciary and due process (paras. 12-14). The Committee requests the incorporation of information on the remainder of its recommendations in the fourth periodic report, due for submission by 1 April 2005.